

June 1, 2009

Sylvia Rodriguez

RE: Sylvia Rodriguez v. Department of Social and Health Services (DSHS)
Allocation Review No. ALLO-09-021

Dear Ms. Rodriguez:

On May 7, 2009, Karen Wilcox, Director's Review Coordinator, sent a letter to you and Pamela Pelton at DSHS, addressing the timeliness of your request for a Director's review. In an email dated May 8, 2009, Ms. Pelton indicated that the allocation decision, dated March 10, 2009, and the related documents were sent to your HR Manager and Children's Administration HR Representative, on that date. By letter dated May 11, 2009 and email dated May 12, 2009, you indicated that you were aware that a PDF was being submitted to Children's Administration HR Representative Toni Tennyson but did not receive the allocation determination letter by United States mail until March 17, 2009. You also indicated that you did not speak with Ms. Tennyson until around March 31, 2009.

On May 19, 2009, I sent an email to Ms. Pelton regarding her May 8, 2009 email to request clarification about her comment that the original signed letter to you was physically picked up on March 11, 2009 at 9:00 a.m. In an email response on May 19, 2009, Ms. Pelton emphasized the following: "I [Ms. Pelton] personally walked the letter down to the U.S. Postal mail box at the DSHS entrance door before 9:00 a.m. on March 11th." Ms. Pelton also submitted a "Motion for Dismissal."

WAC 357-13-080(1) requires employees to request a Director's review within thirty calendar days "of being provided the results of a position review or the notice of reallocation."

WAC 357-04-105(1) provides, in part, the following:

. . . when the civil service rules require an . . . employee . . . to receive notice, the notice must be provided by personal delivery, United States mail, or by telephone facsimile transmission with same-day mailing of copies unless the specific rule requiring notice allows for alternative methods of providing notice such as electronic mail ("e-mail"), state mail service, commercial parcel delivery or campus mail service.

WAC 357-04-105(2) then provides, in part, the following:

. . . **service of notice upon parties will be regarded as completed** when personal delivery has been accomplished; or **upon deposit in the United States mail**, properly stamped and addressed; or upon production by telephone facsimile transmission of confirmation of transmission. When a specific rule allows alternative methods of service, service upon parties will be regarded as completed when it is actually received by the party to which notice is being provided (**Emphasis added**).

In your responses, you indicated you did not receive the allocation determination letter until March 17, 2009. However, the service of notice, as indicated by WAC 357-04-105(2), is the date the letter is deposited in the United States mail. Based on Ms. Pelton's statement that the original letter addressed to you was placed in the U.S. mail on March 11, 2009, you were provided (served with) the allocation decision on that date. The deadline for requesting review elapsed on April 10, 2009. Since your request was not received until April 14, 2009, it was untimely. Therefore, the matter is closed.

Either party may appeal the Director's determination on timeliness to the Personnel Resources Board (Board) by filing written exceptions to the Director's determination in accordance with Chapter 357-52 WAC.

WAC 357-52-015 states that an appeal must be received in writing at the office of the board within thirty (30) calendar days after service of the Director's determination. The mailing address for the Personnel Resources Board (PRB) is P.O. Box 40911, Olympia, Washington, 98504-0911. If a party plans to file an appeal to the PRB in person, please note the following locations, based on the date filed:

- **Through June 25, 2009**, you may file in person at **2828 Capitol Blvd.**, Olympia, Washington.
- **June 26 – July 2, 2009**, you may file in person at **521 Capitol Way South**, Olympia, Washington.
- **Beginning July 6, 2009**, you may file in person at **600 South Franklin**, Olympia, Washington.

If no further action is taken, the Director's determination becomes final.

Sincerely,

Teresa Parsons, SPHR
Director's Review Program Supervisor
Legal Affairs Division

c: Pamela Pelton, DSHS